

## **REMARKS**

Reconsideration of the application is requested in view of the amendments to the claims and the remarks presented herein.

The claims in the application are claims 32 to 37 and 43 to 49, all other claims having been cancelled. With respect to claim 48, the deposit of biological material in accordance with the Budapest Treaty was made with the understanding that all restrictions on availability of the deposit to the public will be irrevocably removed upon the granting of a patent. Therefore, the rejection of claim 48 is deemed to be obviated.

Claims 32 to 34, 36, 39 to 47 and 49 were rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement since the specification was not deemed to reasonably convey to one skilled in the art that the inventor at the time the application was filed had possession of the claimed invention since the claims were drawn to an isolated polynucleotide containing a nucleotide sequence selected from the Markush group which the Examiner deemed not to be enabled.

Applicants respectfully traverse this ground of rejection since the amended claims are believed to comply with USC 112, first paragraph. Claim 32 is now drawn to an isolated polynucleotide consisting of a polynucleotide coding for a polypeptide having the function of

transcription factor and having an amino acid sequence of SEQ ID No: 3 and the remaining claims are dependent thereupon and it is believed that the same is clearly supported by the specification as filed. Therefore, withdrawal of this ground of rejection is requested in view of the Examiner's acknowledgement that the description of an isolated polynucleotide including the polypeptide set forth as SEQ ID No: 3 was supported.

Claims 32 to 49 were rejected under 35 USC 112, second paragraph, as being indefinite for the reasons of record.

Applicants respectfully traverse this ground of rejection since the amended claims are believed to be definite in accordance with 35 USC 112, second paragraph. Claim 32 has been limited as noted in the previous paragraph and the dependency of the claims has been corrected to make them dependent upon claim 32. It is believed that the dependency of the claims has been corrected and that the claims are definite with respect to what follows "and". The term "significant homology" no longer appears in the claims and it is believed that the amended claims properly comply with 35 USC 112.

Claims 32 to 34, 36, 39 to 42, 44 and 49 have been rejected under 35 USC 102 as being anticipated by the Archambault et al reference for reasons of record. Claims 32 to 34, 36, 39 to 47 and 49 were also rejected as being obvious under 35 USC 103 over the same reference taken in view of the Fujiwara et al patent.

Applicants respectfully traverse these grounds of rejection since it is deemed that the claim are neither anticipated nor rendered obvious by the prior art cited by the Examiner since claims 35, 37, 43 and 44 to 48 were not rejected on the prior art, it is believed that the same are deemed by the Examiner to be patentable thereover. However, the Examiner has not so indicated and he is requested to clarify the status of these claims.

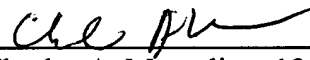
The Archambault et al reference teaches an isolated polynucleotide which encodes *S.cerevisiae* TFIIIA which polynucleotide comprises more than five consecutive amino acids and which encodes an amino acid sequence comprising some groups of five amino acids but the amino acid peptide sequences are distributed and the percent of homology between the polynucleotide of Archambault et al and Applicants' polynucleotide of SEQ ID No: 3 of the present application is only 37% and is excluded from the present scope of the claims. The polypeptide of Archambault et al is therefore different from the polypeptide of SEQ ID No: 3 of the present application. Each eucaryote has such a transcription factor TFIIIA but all of the sequences of the different eucaryotes such a *S.cerevisiae*, *Candida albicans* contain differences and the knowledge of one cannot predict the sequence of the others. Therefore, the Archambault et al reference does not anticipate Applicants' invention.

With respect to the 103 rejection, the primary reference fails for the above reasons and the citation of Fujiwara et al does not overcome the deficiencies thereof. The latter

reference describes human genes and has nothing to do with fungal genes and therefore, the sequences are completely different. The Fujiwara et al patent could not have taught the invention of the present application which is a sequence of the gene TFIIA of candida albicans. Therefore, withdrawal of these grounds of rejection is requested.

In view of the amendments to the claims and the above remarks, it is believed that the claims clearly point out Applicants' patentable contribution and favorable reconsideration of the application is requested.

Respectfully submitted,  
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Enclosure